

Notice of Allowability

Application No.

10/634,365

Examiner

Mital B. Patel

Applicant(s)

WRIGHT, CLIFFORD A.

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 2/16/05.
2. ☒ The allowed claim(s) is/are 2-20.
3. ☒ The drawings filed on 10 June 2004 and 05 August 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 3/31/05.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Mikael Havluciyany on 3/30/05.

The application has been amended as follows:

IN THE CLAIMS:

In Claim 19, line 4, after "wherein" inserted --the other--.

In Claim 19, line 4, deleted "proximal" and inserted --distal--.

In Claim 19, line 4, deleted "toa" and inserted -- to a --.

In Claim 20, line 2, after "user;" inserted --a pair of slider extension tubes coupled to said nasal cannula;--.

2. The following is an examiner's statement of reasons for allowance: As to claims 19, 20, and 16 respectively, the prior art of record does not teach nor render obvious the overall claimed combination of an oxygen delivery system, a nasal cannula, or a method of delivering a fluid to a user including a stop plugged at a distal end of one of the pair of extension tubes, with the other one of the pair of extension tubes adapted to be coupled to a supply of air or fluid source. It should be noted that the closest prior art that teaches a plug in a cannula device is to Winthrop et al. (US 5,682,881) and to Dali et al. (US 3,682,171). Winthrop et al. teaches a nasal cannula having a pair of extension

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slider tubes **20**. However, both pair of extension tubes are connected to a ventilator circuit attachment **12**. The plug **87** that is taught in Winthrop et al. is found in a mean airway pressure measurement tube **84**, which is connected to one of the pair of extension tubes. Furthermore, one of ordinary skill in the art would not be able to construe the measurement tube **84** as one of the pair of extension tubes, since claims 16, 19, and 20 require each of the pair of extension tubes to be received in a recessed channel of the respective ear pieces. Finally, it would not have been obvious to one of ordinary skill in the art to provide ear pieces with recessed channels as Winthrop et al. teaches away from the use of such a securement (See Col.1 and Col. 2 of Winthrop et al.) device to be used with the nasal cannula system nor would it have been obvious to one of ordinary skill in the art to provide the nasal cannula of Winthrop et al with the measurement tube being construed as the other pair of extension tubes with an ear piece having a recessed channel since one would not be able to space the pair of extension tubes from the ears of the user. Dali et al. teaches a nasal cannula with one extension tube **26**, with the plug **28** found at one end of the central portion **22**.

Furthermore, one of ordinary skill in the art would not be able to construe the central portion **22** as the other one of the pair of extension tubes, as **22** would not be able to be received in a recessed channel of an ear piece type securement device. Dali et al. also teaches away from the use of an ear piece type securement device by providing a nose bridge **10** instead. Finally, it would not have been obvious to one of ordinary skill in the art to provide the plug **28** in the nasal cannula having a pair of extension tubes of the

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prior art of record since both pairs of the extension tubes of the nasal cannulas of the art of record are connected to a fluid source.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mital B. Patel whose telephone number is 571-272-4802. The examiner can normally be reached on Monday-Friday (11:00-7:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 3/31/05
Mital B. Patel
Examiner
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